REMARKS

Claims 1, 6, 8, 9, 11, 13, 17, 19, 22, 26, 27, 31, 36, 43 and 48 are pending in the subject application. By this Amendment, applicants have canceled claim 48 without disclaimer or prejudice to applicants' rights to pursue the subject matter of this claim in a continuing application. Applicants have also amended claim 9 to specify that the chemokine receptor to which the claimed antibody or fragment thereof binds in the CCR5 receptor. This amendment is fully supported in the specification at, *inter alia*, page 15, lines 14-16 and page 20, lines 13-14. Thus, the amendment of claim 9 does not raise any issue of new matter. Accordingly, applicants respectfully request that the Examiner enter this Amendment. Upon entry of this Amendment, claims 1, 6, 8, 9, 11, 13, 17, 19, 22, 26, 27, 31, 36 and 43 will be pending and under examination.

Applicants respectfully request that the Examiner reconsider and withdraw the restriction requirement. Under 35 U.S.C. §121, restriction may be required if two or more independent and distinct inventions are claimed in one application. Applicants maintain that the inventions of Groups I-X are not independent. Under M.P.E.P. §802.01, "independent" means there is no disclosed relationship between the subject matter claimed. However, the inventions of Groups I-X are closely related, in that they relate to non-chemokine agents capable of binding to the CCR5 receptor and inhibiting HIV-1 infection of a CD4+ cell, related compositions and methods for identifying and/or using same. Applicants therefore respectfully submit that Groups I-X are not independent and that restriction is not proper.

Furthermore, under M.P.E.P. §803, the Examiner must examine the application on the merits if examination can be made without serious burden, even if the application would include claims to

distinct or independent inventions. That is, there are two criteria for a proper requirement for restriction: (1) the invention must be independent and distinct, and (2) there must be a serious burden on the Examiner if restriction is not required.

Applicants respectfully submit that there would not be a serious burden on the Examiner if restriction were not required, because a search of the prior art relevant to the claims of Groups I-III and V-X would not impose a serious burden once the prior art relevant to Group IV has been identified. Therefore, there would be no serious burden on the Examiner to examine Groups I-X together in the subject application. Hence, the Examiner must examine these Groups on the merits.

In view of the foregoing, applicants maintain that restriction is not proper under 35 U.S.C. §121 and respectfully request that the Examiner reconsider and withdraw the requirement for restriction.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

No fee, other than the enclosed $55.00 fee for a one-month extension of time is deemed necessary in connection with the filing of this Amendment. However, if an additional fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

11/18/04

John P. White
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Date